

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y. **DOCKET & FILE**  
★ JUN 03 2010 ★ *jm*

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ARNOLD D. GARDNER,

Petitioner,

**BROOKLYN OFFICE**

**NOT FOR PUBLICATION**

-against-

UNITED STATES OF AMERICA,

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Respondent.  
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10-MC-159 (KAM) (JO)

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**MATSUMOTO, United States District Judge:**

Proceeding *pro se*, petitioner Arnold D. Gardner ("Gardner") filed a motion against the United States seeking expungement or sealing of his criminal record. (See Doc. No. 2, Redacted Notice of Motion to Expunge; see also Doc. No. 2-1, Affirmation of Arnold D. Gardner in Support of Motion to Expunge.) Specifically, Gardner sought to seal or expunge certain criminal records on the grounds that the records may interfere with Gardner's ability to obtain his security license and secure employment. The government opposed Gardner's request on the grounds that Gardner failed to demonstrate the extreme circumstances necessary to warrant such extraordinary relief. (See Doc. No. 4, Memorandum in Opposition.)

Although this matter was originally assigned by the Clerk to Magistrate Judge James Orenstein for decision, Judge Orenstein requested that the Clerk assign a district judge and entered a Report and Recommendation ("R&R") on the motion in light of recent case law suggesting that a magistrate judge may

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not have authority to resolve this matter. (See Doc. No. 5 at n.1, R&R dated 4/26/10.)

Notice of the Report and Recommendation was sent electronically to all parties via the court's electronic filing system on April 26, 2010. The Report and Recommendation directed the United States to serve a copy of the Report and Recommendation and file proof of service by no later than April 30, 2010, and notified the parties of the right to file written objections by May 14, 2010. (See R&R at 4, see also docket text accompanying Doc. No. 5.) The United States served a copy of the Report and Recommendation on Gardner and filed a declaration of service on May 3, 2010. (See Doc. No. 6.) Accordingly, the time for filing written objections did not expire until May 17, 2010. The period for filing objections for all parties has now expired, and no objections to the Report and Recommendation have been filed.

A district court reviews those portions of a report and recommendation to which a party has timely objected under a *de novo* standard of review and "may accept, reject, or modify, in whole or in part, the findings or recommendations . . ." 28 U.S.C. § 636(b)(1)(C). However, where no objections to the Report and Recommendation have been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606,

609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a careful review of the record and Judge Orenstein's well-reasoned Report and Recommendation, the court finds no clear error in Judge Orenstein's Report and Recommendation and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court.

Petitioner's motion is denied, and the Clerk of the Court is respectfully requested to enter judgment in favor of the United States and to close this case.

**SO ORDERED.**

Dated: June 2, 2010  
Brooklyn, New York

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/s/  
**Kiyo A. Matsumoto**  
United States District Judge